

Meeting of 2006-12-19 Regular Meeting

MINUTES  
LAWTON CITY COUNCIL REGULAR MEETING  
DECEMBER 19, 2006 6:00 P.M.  
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor John Purcell, Jr.                      Also Present:  
Presiding                      Larry Mitchell, City Manager  
   John Vincent, City Attorney  
   Traci Hushbeck, City Clerk

Mayor Purcell called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Terry Koehn, Saint Pauls United Methodist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:                      Bill Shoemate, Ward One  
Janice Drewry, Ward Three                      Keith Jackson, Ward Four  
Robert Shanklin, Ward Five  
   Jeff Patton, Ward Six  
   Stanley Haywood, Ward Seven

ABSENT:                      Rex Givens, Ward Two  
   Randy Warren, Ward Eight

DONATION TO THE CITY ART COLLECTION OF JACK STOREY AND DON BARTON PORTRAITS FROM FAMILY MEMBERS KIM KELLY AND MARJORIE FARRELL.

Billie Whipp, Arts and Humanities Division stated they are here to accept a gift on behalf of the City of Lawton that has been donated to the city art collection to be housed at McMahon Auditorium. She introduced Terry Anderson and Dave Sandstrom, members of the executive committee of the McMahon Auditorium Authority.

Mr. Anderson introduced Ms. Marjorie Farrell, who has been the driving force of the donation of the portraits.

Ms. Farrell stated she is representing Kim Kelley, who is the nephew of Jack Storey and the owner of the paintings. She stated she is Don Barton's cousin. They are donating the paintings of Jack Storey and Don Barton in the hope that the contributions of Storey and Barton will be remembered for years to come. The portraits will be displayed in the auditorium during any and all events concerning dance.

Mayor Purcell stated on behalf of the City Council and the citizens of Lawton he thanked the entire family for this wonderful contribution to the McMahon Auditorium.

PRESENTATION OF DONATION TO THE LAWTON FIRE DEPARTMENT

Chief Bart Hadley introduced Dr. Wayne and Cassandra Johnson. He stated he received a phone call today from Mrs. Johnson. She inquired as to the needs of the fire department. He stated they offered to purchase a Jaws of Life extrication tool and will be donating \$6,500 to purchase that equipment.

Dr. Johnson stated it is an honor to give this token of their appreciation. He stated they will match this gift to the Lawton Police Department for three defibrillators.

Mayor Purcell stated Dr. and Mrs. Johnson are great patrons of this community. They participate regularly in community activities.

Mayor Purcell stated he would like to recognize Comanche Tribe Chairman Wallace Coffey who is in attendance.

AUDIENCE PARTICIPATION: None.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

MOVED by Haywood, SECOND by Drewry, to approve the Consent Agenda items as recommended. AYE: Shoemate, Drewry, Jackson, Shanklin, Patton, Haywood. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval and consider passage of any resolution authorizing the City Attorney to file a friendly suit for the claim which is over \$400.00: Lucetta Pullins in the amount of \$15,000.00. Exhibits: Legal Opinion/Recommendation and **Resolution No. 06-204**.
2. Consider the following damage claims as recommended for denial, Gaboon Roberts in the amount of \$4,104.10, Cleother and Gloria Titus in the amount of \$489.70. Exhibits: Legal Opinions/Recommendations.
3. Consider adopting a resolution ratifying the action of the City Attorney and the City Manager in directing our third party administrator to make payment on the judgment in the Workers' Compensation case of Angela Chiarappa in the Workers' Compensation Court, Case No. 2005-07459 R. Exhibits: **Resolution No. 06-205**.
4. Consider approving the Contract for Sale of surplus property described as Lots 13 thru 16 of Block 85 of Lawton View Addition to Barbara Ward in the amount of Two Thousand Dollars (\$2,000.00), and authorize the Mayor and City Clerk to execute the Contract for Sale and a Quit Claim Deed. Exhibits: The Contract for Sale and Quit Claim Deed are on file in the City Clerk's office.
5. Consider approving the record plat for BOA Development. Exhibits: Plat Map.
6. Consider approval of a Professional Services Agreement with Roy B. Hooper from January 1, 2007 through June 30, 2007, for the purpose of providing professional consulting/lobbyist services to the City and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Consultant Agreement.
7. Consider approving Change Order No. 1 for the Water Storage Tanks Renovation & Maintenance Project #2005-6 with Utility Service Co., Inc. Exhibits: None.
8. Consider ratifying the actions of the City Engineer and approving Change Order No. 1 for the NW Hunter Road & NW 72<sup>nd</sup> Street Reconstruction Project #2006-16 with T&G Construction Inc. Exhibits: None.
9. Consider adopting Street Light Resolution No. 449 to authorize the installation of street lights at various locations listed in the Resolution. Exhibits: Street Light Resolution No. 449.
10. Consider awarding (CL07-009) Jet Rodder & Vacuum Debris Truck to J & R Equipment, LLC, of Oklahoma City, OK. Exhibits: Wastewater Maintenance recommendation, Equipment Maintenance Recommendation, abstract of bids.
11. Consider approving appointments to boards and commissions. Exhibits: None
12. Consider approval of payroll for the periods of December 4 - 17, 2006.

#### BUSINESS ITEMS:

Mayor Purcell requested that item #14 be stricken off the agenda.

13. Consider adopting an ordinance amending Sections 15-1-101 and 15-1-102, Article 15-1, Chapter 15, Lawton City Code, 2005, by adding a definition for the term blighting influence and expanding the definition of what shall constitute a public nuisance, providing for severability, and declaring an emergency. Exhibits: Ordinance No. 06-\_\_\_\_.

Vincent read the definition of blighting influence. He stated it is important to note that other cities have adopted this definition and will allow us to continue our efforts to clean up Lawton, especially in the gang areas. This tells the landlord that he has to help us clean that up.

Shanklin stated that when he gets notice, he can go to the police and they will help him.

Vincent stated the police may help stop the graffiti, but cleaning it up will be the responsibility of the property owner, unless we can catch who is doing this and make them clean it up under community service.

Shanklin stated he can go before the judge and say he wants them moved out.

Vincent stated this does not relate to evictions.

Shanklin stated he is a property owner and he wants to clean it up also, but he needs help sometimes and he does not always get it.

Vincent stated they will notify the landlord of the illicit activity that is taking place in the home or apartment that they are renting. We will assist the landlord as much as we legally can in getting those people out of the home or apartment.

Shanklin stated regarding item #6 of the ordinance, they never did codify the change that was made several years ago.

Vincent stated the dead tree limb issue is in another part of the code. This just defines what a dead tree limb is. The distance, height and elevation above the ground is in another section of the code.

Shanklin questioned if Neighborhood Services would enforce this ordinance.

Vincent stated yes.

Shanklin questioned if the code book ever got codified as to who would take care of those dead limbs?

Vincent stated if the limb is over a public street, the City of Lawton would take care of it. It is not in the code, it is in a Council Policy.

MOVED by Jackson, SECOND by Drewry, to approve **Ordinance 06-89**, waive the reading of the ordinance, read the title only and declaring an emergency. AYE: Shoemate, Drewry, Jackson, Shanklin, Patton, Haywood. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 06-89

An ordinance pertaining to nuisances and health amending Section 15-1-101 and 15-1-102, Article 15-1, Chapter 15, Lawton City Code, 2005, by expanding the definition of public nuisance and adding a definition for blighting influence, providing for severability, and declaring an emergency.

14. Consider approving a master service agreement with AT&T Oklahoma to provide Hosted E9-1-1 Services. Exhibits: The Master Service Agreement is on file in the City Clerk's Office.

THIS ITEM WAS STRICKEN.

15. Consider declaring an emergency, waiving the competitive bidding requirements and awarding a contract for the Water Storage Tank Roof Repair Project #2006-14. Exhibits: None.

Jerry Ihler, Public Works Director, stated they have a project as part of the CIP where they have been painting the elevated storage tower on W. 82<sup>nd</sup> Street. They also will be painting the elevated storage tower on Rogers Lane near 38<sup>th</sup> Street and the 7 million gallon storage tank at 67<sup>th</sup> Street and Atlanta. As they got into the process of taking the 7 million gallon storage tank, they started sandblasting on the upper edge along the roof, and a majority of the rafters and beams were deteriorated to the point that they needed to be replaced. Staff is asking the City Council to consider this an emergency and waive the competitive bidding process, and they will still take bids. What Council will be waiving is the amount of time that it will take to bid. They accepted bids last Friday, but unfortunately they only received one bid that they considered responsive. A second bid was received, but it was non responsive. The bid they did receive was \$504,000 to replace those rafters and beams. Staff feels this bid was too high. If the City Council rejects those bids, Engineering Division would be allowed waive the competitive bidding act, go out and get price quotes again in a timely fashion and receive those bids. Staff is asking the City Council to reject the bids they have already received and also authorize staff to waive the competitive bidding act and move forward with receiving new bids and if the bids come in \$400,000 or less and they meet all of the requirements of the specifications, authorize staff to proceed and tell the company to move forward with ordering the material and then staff would come back on January 9<sup>th</sup> to ratify their actions. He stated the emergency deals with the fact that the 7 million gallon storage tank provides water to west Lawton and the industrial area. We are okay without it in the winter months, but they need to be on line in June and July.

Shanklin stated the independent firm that looked at it did not identify this problem. He questioned if they could have even seen it to begin with.

Ihler stated you could not see the amount of deterioration and amount of damage to the rafters until you got in there and sandblasted.

Shanklin stated there is already a contractor on the job.

Ihler stated the one bid they did receive, that contractor is on the job, but staff felt the \$504,000 was too high.

MOVED by Shanklin, SECOND by Haywood, to reject bids, waive the competitive bidding act and authorize the Public Works Director to proceed with new bids and accept those new bids if they are under \$400,000. AYE: Drewry, Jackson, Shanklin, Patton, Haywood, Shoemate. NAY: None. MOTION CARRIED.

#### ADDENDUM:

1. Consider ratifying the action of the City Attorney in filing an appeal in the workers compensation case of Maurice Neil Morgan, Workers Compensation Court Case No. 2005-14769X. Exhibits: Resolution No. 06-\_\_.

Vincent stated the court awarded the claimant in this case \$27,455.00 for a back injury. Staff feels the award is excessive and they are appealing the amount. Staff is requesting that the City Council ratify the action of the City Manager and City Attorney in filing this appeal.

MOVED by Patton, SECOND by Jackson, to approve **Resolution 06-206** ratifying the action of the City Attorney in filing an appeal in the workers compensation case of Maurice Neil Morgan, Workers Compensation Court Case No. 2005-14769X. AYE: Drewry, Jackson, Shanklin, Patton, Haywood, Shoemate. NAY: None. MOTION CARRIED.

2. Consider approving an Amended Lease/Sublease Agreement with the Percussive Arts Society, Inc., and authorize the Mayor and City Clerk to execute the agreement. Exhibits: Amended Lease/Sublease Agreement with the Percussive Arts Society, Inc. is on file in the City Clerk's Office.

Vincent stated the Percussive Arts Society has signed an agreement to move their facility to Indianapolis and as a result they have exercised a clause under their lease agreement where they are allowed to sublease the property to a like type organization. They have entered into a tentative agreement, subject to City Council approval, with the Comanche Nation to provide space for the Comanche Nation Museum. They have met all their requirements and staff has reviewed and made comments. Staff did recommend several amendments to the lease that were accepted by the Comanche Nation and the Percussive Arts Society. The agreement has been approved by both groups.

Jackson stated that this could not be located in a better place with the Museum of the Great Plains and the McMahon Auditorium. He stated it will greatly enhance the city of Lawton.

Mayor Purcell stated as part of this agreement, the Comanche Nation Tribe has graciously agreed to provide \$100,000 to the City of Lawton to be used for the bike trails program. He stated this will go a long way to help with the quality of life in this community.

John Plata, Attorney for Comanche Nation, stated he is encouraged to hear such positive comments from the City Council. The Comanche Nation has wanted a museum in this community for a very long time. Their business committee recently took this action and their tribal members are happy that this museum will be in the middle of a cultural center in Lawton. He stated the city of Lawton and the Comanche Tribe is ready for this type of cooperative agreement and interaction between the tribe and city and county government.

Wallace Coffey, Comanche Tribe Chairman, thanked the City Council for their consideration. He stated the Comanche Nation has recently expanded and they have a lot of service projects in mind such as the nursing home and funeral services. This project will give them an opportunity to gain some tourism for this community.

Gene Pekah, Comanche Tribe Administrator, stated this is a great opportunity for the tribe, community and the State of Oklahoma to have this museum in a complimentary area.

Lon Parks, initiator of the bike trails program, stated they really appreciate this donation and this community would be greatly enhanced if it was linked with bike and jogging trails. This donation will be a great boost for the program.

Mitchell stated the City of Lawton is very humbled by the generosity of the Comanche Tribe and hopefully that

money will be used to leverage some state and federal dollars.

MOVED by Shoemate, SECOND by Haywood, to approve an Amended Lease/Sublease Agreement with the Percussive Arts Society, Inc., and authorize the Mayor and City Clerk to execute the agreement. AYE: Jackson, Shanklin, Patton, Haywood, Shoemate, Drewry. NAY: None. MOTION CARRIED.

3. Consider approving the application for a Lease-Purchase agreement for the construction of approximately 1,064 lf of 12 diameter sanitary sewer main and approximately 745 lf of 15 diameter sanitary sewer main located in the SW quarter of Section 4 and the SE quarter of Section 5, T1N, R12W, near the intersection of SW Bishop Road and SW 67<sup>th</sup> Street. Exhibits: Application for Lease-Purchase agreement.

Mayor Purcell stated the next three agenda items should read consider accepting the application.

Deborah Jones, Senior Planner, there are three lease purchase items on the Addendum, all relating to subdivisions. This particular subdivision is Oak Pointe located just north of Bishop Road. The developer is Ron Nance. He is proposing to build both sanitary sewer and water for the subdivision. The application is requesting approval of a lease purchase agreement at a later date with the City of Lawton where he could recoup some of his costs for the construction of the water and sewer from the service area.

Shanklin questioned how the lease purchase would work.

Vincent stated it is the old payback system where the developer, prior to construction, gets with the City to determine whether or not he can recoup part of his construction costs if someone else ties on to those lines.

MOVED by Haywood, SECOND by Jackson, to accept the application for a Lease-Purchase agreement for the construction of approximately 1,064 lf of 12 diameter sanitary sewer main and approximately 745 lf of 15 diameter sanitary sewer main located in the SW quarter of Section 4 and the SE quarter of Section 5, T1N, R12W, near the intersection of SW Bishop Road and SW 67<sup>th</sup> Street. AYE: Shanklin, Patton, Haywood, Shoemate, Drewry, Jackson. NAY: None. MOTION CARRIED.

4. Consider approving the application for a Lease-Purchase agreement for the construction of approximately 1,073 lf of 18 diameter water main located along SW 67<sup>th</sup> Street approximately mile south of SW Lee Blvd. Exhibits: Application for Lease-Purchase agreement.

Jones stated this is for Oak Pointe Subdivision and staff has recommended that the City Council accept the application for the water portion of the lease purchase.

MOVED by Haywood, SECOND by Shoemate, to accept the application for a Lease-Purchase agreement for the construction of approximately 1,073 lf of 18 diameter water main located along SW 67<sup>th</sup> Street approximately mile south of SW Lee Blvd. AYE: Patton, Haywood, Shoemate, Drewry, Jackson, Shanklin. NAY: None. MOTION CARRIED.

5. Consider approving the application for a Lease-Purchase agreement for the construction of approximately 2,035 lf of 10 diameter sanitary sewer main located in the SW quarter of Section 3, T1N, R12W, near the intersection of SW Bishop Road and SW 52<sup>nd</sup> Street. Exhibits: Application for Lease-Purchase agreement.

Jones stated this is a subdivision know as the Highlands Subdivision and is close to 52<sup>nd</sup> and Bishop Road.

MOVED by Haywood, SECOND by Drewry, to accept the application for a Lease-Purchase agreement for the construction of approximately 2,035 lf of 10 diameter sanitary sewer main located in the SW quarter of Section 3, T1N, R12W, near the intersection of SW Bishop Road and SW 52<sup>nd</sup> Street. AYE: Haywood, Shoemate, Drewry, Jackson, Shanklin, Patton. NAY: None. MOTION CARRIED.

#### REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Drewry stated she would like to thank the citizens of Lawton for helping with the Salvation Army Angel Tree. They gave out over 1,000 gifts to children and food boxes to 500 families.

Jackson stated at one time the City of Lawton agreed to stay out of the Hilliary lawsuit regarding water rights north of Lake Lawtonka. He stated he feels the situation has changed enough that they need to consider re-entering the cause on behalf of the citizens of Lawton and try to protect our water rights up there. Things have changed since the time that the City of Lawton decided to make an agreement with the Hilliary s. He would like to agenda an item in the future for Council discussion whether or not to re-enter this water lawsuit.

Vincent stated there was a mediation hearing on December 11<sup>th</sup> in Oklahoma City. He stated he will agenda an item for the first meeting in January to address this issue in executive session.

Haywood stated he has received some calls regarding the gang activity. He stated they all need to work together to get rid of the gang activity. He is making some home visits to talk to parents. The police cannot do this by themselves.

Mitchell stated he saw an article about Tulsa s community effort against gang activity and he will place a copy in the Council s boxes along with their plan for action.

Mayor Purcell stated there is a special City Council meeting on January 16<sup>th</sup> to hear from the Lawton Police Department on what is going on. As soon as that meeting is over he plans to send a letter to every minister in town and ask them to come to a meeting so they can hear a similar presentation and we can have a dialogue and work through the police and the churches. He stated they are already working with the legislature to try to change some laws.

Shoemate questioned if when someone is caught writing graffiti, could they be sentenced to community service hours cleaning graffiti off of walls.

Vincent stated we could recommend to the judge that community service might be better punishment than a fine.

Mayor Purcell stated last Friday he received a call from Don Davis with the Governor s office. He stated that he, Larry Mitchell, Representative Don Armes and Kevin Jackson will go to Oklahoma City and have a preliminary meeting with Mr. Davis and some senior staff members of the Governor. He stated he will then have a meeting with the Governor to talk about funding for BRAC.

The Mayor and Council convened in executive session at 6:47 p.m. and reconvened in regular, open session at 7:18 p.m. Roll call reflected all members present.

#### BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

16. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending Workers Compensation claim of James Hitchcock, and if necessary, take appropriate action in open session. Exhibits: None.

Vincent read the title of item 16 shown above. The City Attorney did discuss possible alternatives.

MOVED by Patton, SECOND by Shanklin to authorize the City Attorney to enter into negotiations concerning settlement of this matter. AYE: Drewry, Jackson, Shanklin, Patton, Haywood, Shoemate. NAY: None. MOTION CARRIED.

17. Pursuant to Section 307B.2&4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations concerning employees and representatives of employee groups and the proceedings in American Federation of State, County, and Municipal Employees Union vs. City of Lawton, Oklahoma, PERB No. M1400, and if necessary, take appropriate action in open session. Exhibits: None.

Vincent read the title of item 17 shown above. He said the Council did receive an update on the current status of this case. No action is required.

18. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the litigation styled City of Lawton vs. Jessie Frances Gay, et al, Case No. CJ-2006-307, pending in Comanche County District Court; and if necessary, take appropriate action in open session. Exhibits: None.

Vincent read the title of item 18 shown above. He said the Council did receive a briefing on the courses of action that are available.

MOVED by Haywood, SECOND by Shoemate to dismiss the existing court case with no cost to the owner. AYE: Jackson, Shanklin, Patton, Haywood, Shoemate, Drewry. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 7:20 p.m. upon motion, second and roll call vote.

JOHN P. PURCELL, JR., MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK